

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FILED  
U.S. DISTRICT COURT  
2007 MAY 25 10 34 AM  
S.D. OF N.Y.M.P.

ELANOR TEDONE,

Plaintiff,

State Index No.: 02773/07

Civil No.: \_\_\_\_\_

against-

H.J. HEINZ COMPANY,  
OWENS-ILLINOIS, INC d/b/a  
OWENS-BROCKWAY GLASS CONTAINERS,  
and MGM MIRAGE INC. d/b/a BORGATA  
HOTEL CASINO & SPA,

NOTICE OF REMOVAL

Defendants.

**07 CIV. 4111  
WP4**

**OWENS-ILLINOIS, INC. d/b/a OWENS-BROCKWAY GLASS CONTAINERS,**

("defendant"), by counsel, states the following:

1. Plaintiff commenced this action on or about February 16<sup>th</sup>, 2007, by filing a Summons and Verified Complaint in the New York State Supreme Court in Westchester County under Index Number 02773/07 and captioned as above. Pursuant to 28 USC § 1446(a), an index of copies of all process, pleadings and orders served upon the defendant is attached hereto as "Exhibit A," and a copy of the plaintiff's Summons and Verified Complaint is attached hereto as "Exhibit B."

2. The defendant was served with this Summons and Verified Complaint by the plaintiff via the C.T. Corporation on or about May 3<sup>rd</sup>, 2007. A copy of C.T. Corporation's "Service of Process Transmittal" is attached hereto as "Exhibit C." This was the first notice Owens-Illinois, Inc., received in regards to this alleged incident.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
FILED:

3. This Notice of Removal is being filed within thirty (30) days after receipt of the Summons and Verified Complaint by the defendant, and as such is timely pursuant to 28 USC § 1446(b).

4. Plaintiff's Verified Complaint alleges that on or about February 25<sup>th</sup>, 2005, plaintiff was present at the Borgata Casino in Atlantic City, New Jersey and sustained personal injury as the result of an alleged defect in a glass bottle purportedly manufactured by this defendant. Upon information and belief, the value of the injuries suffered by the plaintiff exceeds \$75,000.00. The basis for this belief is a conversation with counsel for plaintiff wherein he advises his client suffered a "severe" laceration to the hand and that the case has a top value of \$125,000.00. The sufficiency of this claim is not admitted.

5. Defendant is a Delaware corporation having its principal place of business in the State of Ohio. Co-defendant H.J. HEINZ COMPANY is a Pennsylvania corporation having a principal place of business in the State of Pennsylvania. Co-defendant M.G.M. MIRAGE INC. d/b/a BORGATA HOTEL CASINO & SPA is a Delaware Corporation having a principal place of business in the State of New Jersey. The Plaintiff is a New York resident with a principal domicile in the City of New Rochelle.

6. Pursuant to 28 USC § 1332(c)(1), full diversity exists among all parties.

7. Insofar as the amount in controversy is alleged to exceed \$75,000.00 and full diversity exists between the parties, removal is proper pursuant to 28 USC § 1332(a) and 28 USC § 1441(a).

8. Contemporaneously herewith, written notice is being given to all adverse parties and to the Clerk of the State of New York, Supreme Court, County of Westchester, that this Notice of Removal is being filed with this Court.

**WHEREFORE**, defendant OWENS-ILLINOIS, INC. d/b/a OWENS-BROCKWAY GLASS CONTAINERS files this Notice of Removal so that the entire state court action under Index Number 02773/07 now pending in the State of New York, Supreme Court, County of Westchester, be removed to this Court for all further proceedings.

Dated: May 25, 2007  
White Plains, New York

Yours, etc.,

GOLDBERG SEGALLA, LLP

By: 

Brian T. Stapleton, Esq.

Frank J. Ciano, Esq.

David S. Osterman, Esq.

170 Hamilton Avenue, Suite 203

White Plains, New York 10601

(914) 798-5400

*Attorneys for Defendant*

**OWENS-ILLINOIS, INC. d/b/a**

**OWENS-BROCKWAY GLASS CONTAINERS**





**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ELANOR TEDONE,

Plaintiff,

against-

H.J. HEINZ COMPANY,  
OWENS-ILLINOIS, INC d/b/a  
OWENS-BROCKWAY GLASS CONTAINERS,  
and MGM MIRAGE INC. d/b/a BORGATA  
HOTEL CASINO & SPA,

Defendants.

State Index No.: 02773/07

Civil No.: \_\_\_\_\_

**NOTICE OF REMOVAL**

**INDEX OF PROCESS, PLEADINGS AND  
ORDERS SERVED UPON DEFENDANT**

1. Summons and Verified Complaint dated and filed February 16<sup>th</sup>, 2007.
2. C.T. Corporation's "Service of Process Transmittal" dated May 3<sup>rd</sup>, 2007.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
ELEANOR TEDONE,

Plaintiff,

-against-

H.J. HEINZ COMPANY,  
OWENS-ILLINOIS, INC. d/b/a/  
OWENS BROCKWAY GLASS CONTAINERS,  
and MGM MIRAGE INC. d/b/a BORGATA  
HOTEL CASINO & SPA,

Defendants.  
-----X

Index No.: 02773/07  
Date Purchased: 3/16/07

**SUMMONS**

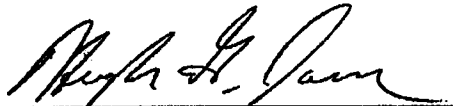
Plaintiff designates:  
Westchester County as  
the place of trial.  
The Basis of venue is  
Plaintiff's address:  
150 Neptune Avenue  
New Rochelle, New York  
Westchester County, New  
York

To the above named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: White Plains, New York  
February 14<sup>th</sup>, 2007

**RECEIVED**  
FEB 16 2007  
TERRY J. DOMI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

  
\_\_\_\_\_  
Hugh G. Jasne, Esq.  
JASNE & FLORIO, L.L.P.  
Attorney for Plaintiff  
525 N. Broadway Suite 222  
White Plains, NY 10603  
(914) 997-1212

H.J. HEINZ COMPANY  
PO BOX 57  
PITTSBURGH, PA 15230  
ATTENTION: LAW DEPARTMENT

H.J. HEINZ COMPANY  
C/O C T CORPORATION SYSTEM  
111 EIGHTH AVENUE  
NEW YORK, NEW YORK 10011

OWENS-ILLINOIS, INC. d/b/a/  
OWENS BROCKWAY GLASS CONTAINERS  
ONE MICHAEL OWENS WAY  
PERRYSBURG, OHIO 43551-2999

OWENS-ILLINOIS, INC. d/b/a/  
OWENS BROCKWAY GLASS CONTAINERS  
C/O C T CORPORATION SYSTEM  
111 EIGHTH AVENUE  
NEW YORK, NEW YORK 10011

MGM MIRAGE INC. d/b/a  
BORGATA HOTEL CASINO & SPA.,  
C/O C T CORPORATION SYSTEM  
111 EIGHTH AVENUE  
NEW YORK, NEW YORK 10011



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
ELEANOR TEDONE,

Plaintiff,

-against-

H.J. HEINZ COMPANY,  
OWENS-ILLINOIS, INC. d/b/a/  
OWENS BROCKWAY GLASS CONTAINERS,  
and MGM MIRAGE INC. d/b/a BORGATA  
HOTEL CASINO & SPA,

Defendants.  
-----X

VERIFIED COMPLAINT

RECEIVED

FEB 16 2007

TIMOTHY J. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Plaintiffs, by their attorneys JASNE & FLORIO, L.L.P. complaining of the Defendants,  
respectfully alleges as follows:

**PARTIES, JURISDICTION & VENUE**

1. At all relevant times, PLAINTIFF, ELEANOR TEDONE, was a resident of the County of WESTCHESTER, State of New York.
2. At all relevant times, PLAINTIFF, ELEANOR TEDONE, resided at 150 Neptune Avenue, New Rochelle, New York.
3. At all relevant times, Defendant, H.J. HEINZ COMPANY was doing business within the State of New York.
4. At all relevant times, Defendant, H.J. HEINZ COMPANY was authorized to do business in the State of New York.
5. At all relevant times, Defendant, OWENS-ILLINOIS, INC. was registered to do business within the State of New York.

6. At all relevant times, Defendant, OWENS-ILLINOIS, INC. was doing business within the State of New York.
7. At all relevant times, Defendant, OWENS-ILLINOIS, INC. was doing business as OWENS BROCKWAY GLASS CONTAINERS.
8. At all relevant times, Defendant, OWENS-ILLINOIS, INC. was authorized to do business in the State of New York.
9. At all relevant times, Defendant, MGM MIRAGE INC. was registered to do business within the State of New York.
10. At all relevant times, Defendant, MGM MIRAGE INC. was doing business as BORGATA HOTEL CASINO & SPA.
11. At all relevant times, Defendant, MGM MIRAGE INC. was authorized to do business in the State of New York
12. At all relevant times, Defendant, MGM MIRAGE INC. doing business as BORGATA HOTEL CASINO & SPA hereafter "BORGATA" was located at One Borgata Way, City of Atlantic City in the State of New Jersey.
13. At all relevant times, Defendant BORGATA was and is the owner and operator of record of the property located at One Borgata Way, City of Atlantic City in the State of New Jersey.
14. At all relevant times, H. J. HEINZ COMPANY sold HEINZ ketchup products in containers produced by OWENS-ILLINOIS, INC.
15. At all relevant times, Defendant, OWENS-ILLINOIS, INC. was a supplier and retailer of glass containers used in the packaging of HEINZ products.
16. At all relevant times, Defendant, OWENS-ILLINOIS, INC. was a supplier and retailer of

glass containers used in the packaging of 2.25 oz. HEINZ tomato ketchup.

17. At all relevant times, Defendant, H.J. HEINZ COMPANY was a supplier and retailer of 2.25 oz. ketchup product supplied to establishments in the food service industry, servicing the public.
18. At all relevant times, Defendant, H.J. HEINZ COMPANY was a supplier and retailer of 2.25 oz. ketchup product supplied to Defendant BORGATA for the purpose of servicing the public.

#### **FACTUAL ALLEGATIONS**

19. That the acts complained of hereunder forming the basis of the within action took place in the County of the Atlantic, City of Atlantic City and the State of New Jersey.
20. That on the 20th of February, 2005, the PLAINTIFF was lawfully present as a guest of Defendant, Borgata for lawful purposes.
21. That on or about the 20th of February, 2005, the PLAINTIFF contracted for lodging by Defendant, Borgata, as an Innkeeper.
22. That on the 20th of February, 2005, the PLAINTIFF ordered and received in-room dining where Defendant, Borgata supplied Plaintiff with 2.25 ounce container of Heinz tomato ketchup in addition to other foods.
23. The Plaintiff undertook to open said container, when in the process of the twisting motion the container glass fractured in the Plaintiff's hands.
24. Said container sent shards of glass into the Plaintiff's hands which was compounded by the twisting motion necessary to open the container.

25. As a result of the above acts of the Defendants, the PLAINTIFF has suffered serious personal injuries causing her to become and remain sick, sore, lame, and disabled; confining her at home and bed; compelling her to obtain hospital and medical treatment for the injuries in an effort to alleviate and/or cure some of the injuries and disabilities; incapacitating her from her usual duties, and thereby depriving her of the emoluments derived therefrom, preventing her from enjoying the normal fruits of her activities; and resulting in emotional distress, loss of liberty, substantial monetary expenses, loss and injuries, some of which are permanent in nature, and, upon information and belief, as a result of said injuries, Plaintiff has been and will continue to be obligated to incur expenses for medical care and attention.
26. The injuries and damages sustained by Plaintiff was caused by reason of Defendant's negligence and were not caused by any want, lack of care or lack of caution on the part of the Plaintiff.

**AS AND FOR PLAINTIFFS FIRST CAUSE OF ACTION:**

27. Plaintiff repeats, restates, and reiterates each and every statement made previously heretofore with the same force and effect as if set forth fully at length once and again.
28. Upon information and belief, Defendant, Borgata had a duty of reasonable care to make premises safe for patrons.
29. Defendant, Borgata, failed to inspect or warn Plaintiff of the possibility that container was defective or damaged.
30. The INJURIES were the result of, caused and occasioned through and by reason of the failure of the defendants to preform such duty.

31. The INJURIES were the result of, caused and occasioned through and by reason of the carelessness, recklessness and negligence of Defendants, having failed to exercise due and proper care in the service of Plaintiff patron.
32. That the Defendants, by their agents, servants and/or employees have failed to comply with their non-delegable duties to the PLAINTIFF.

**AS AND FOR PLAINTIFFS SECOND CAUSE OF ACTION:**

33. Plaintiff repeats, restates, and reiterates each and every statement made previously heretofore with the same force and effect as if set forth fully at length once and again.
34. That Defendant OWENS-ILLINOIS, INC. was negligent in the design, manufacture and implementation of the container used to hold Heinz ketchup.
35. That Defendant OWENS-ILLINOIS, INC was and is aware that the product's travel through normal channels of distribution may become unsafe by impact to container causing cracking and breakage by the consumer's normal and foreseeable use of said product.
36. That Defendant OWENS-ILLINOIS, INC was and is aware that alternative materials are available in the manufacture of ketchup containers that would be resistant to cracking and breakage.
37. That the use of alternative materials would not affect the cost or utility of said product.
38. The INJURIES were the result of, caused and occasioned through and by reason of the carelessness, recklessness and negligence of Defendants, having failed to exercise due and proper care in the maintenance of said property.
39. That the Defendants, by their agents, servants and/or employees have failed to comply with

their non-delegable duties to the PLAINTIFF.

**AS AND FOR PLAINTIFFS THIRD CAUSE OF ACTION:**

40. Plaintiff repeats, restates, and reiterates each and every statement made previously heretofore with the same force and effect as if set forth fully at length once and again.
41. That Defendant OWENS-ILLINOIS, INC. was negligent in the manufacturing of the container used to hold Heinz ketchup.
42. That Defendant OWENS-ILLINOIS, INC. failed to properly inspect the container used to hold Heinz ketchup.
43. That the container left the custody of Defendant OWENS-ILLINOIS, INC. in a condition that was different and more dangerous than properly made containers.
44. That the product traveled through normal channels of distribution.
45. The INJURIES were the result of, caused and occasioned through and by reason of the carelessness, recklessness and negligence of Defendants, having failed to exercise due and proper care in the maintenance of said property.
46. That the Defendants, by their agents, servants and/or employees have failed to comply with their non-delegable duties to the PLAINTIFF.

**AS AND FOR PLAINTIFFS FOURTH CAUSE OF ACTION:**

47. Plaintiff repeats, restates, and reiterates each and every statement made previously heretofore with the same force and effect as if set forth fully at length once and again.
48. That Defendant H.J. HEINZ COMPANY was negligent in the inspection of the container

used to hold Heinz ketchup.

49. That Defendant H.J. HEINZ COMPANY by and through its agents failed to properly inspect the container used to hold Heinz ketchup.
50. That the container left the custody of Defendant H.J. HEINZ COMPANY in a condition that was different and more dangerous than properly made containers.
51. That the product travel through normal channels of distribution.
52. The INJURIES were the result of, caused and occasioned through and by reason of the carelessness, recklessness and negligence of Defendants, having failed to exercise due and proper care in the maintenance of said property.
53. That the Defendants, by their agents, servants and/or employees have failed to comply with their non-delegable duties to the PLAINTIFF.

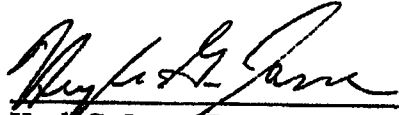
**AS AND FOR PLAINTIFFS FIFTH CAUSE OF ACTION:**

54. Plaintiff repeats, restates, and reiterates each and every statement made previously heretofore with the same force and effect as if set forth fully at length once and again.
55. The above stated glass ketchup bottle was unfit, unuseable and unsuitable for it's intended use and purpose.
56. The above stated glass ketchup bottle caused injury to the Plaintiff herein.

**WHEREFORE**, PLAINTIFF demands Judgment against the Defendants jointly and severally in an amount exceeding all lower Court jurisdictions relevant to the action, as well as costs and disbursements of the action and any other just and further relief the Court may so determine as

just and proper.

Dated: White Plains, New York  
February 14th, 2007

A handwritten signature in dark ink, appearing to read "Hugh G. Jasne", is written over a horizontal line.

Hugh G. Jasne, Esq.

**JASNE & FLORIO, LLP**

*Attorneys for Plaintiff*

525 N. Broadway Suite 222

White Plains, New York 10603

(914) 997-1212



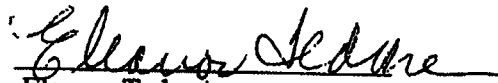
VERIFICATION

STATE OF NEW YORK                    )  
                                              ) ss.:  
COUNTY OF WESTCHESTER         )

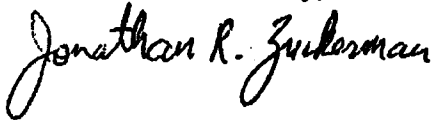
Eleanor Tedone, being duly sworn, deposes and says:

That I am the PLAINTIFF in the within action.

I have read the foregoing SUMMONS & VERIFIED COMPLAINT and know the contents thereof, and the same is true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters, I believe them to be true.

  
Eleanor Tedone

Sworn to before me this  
15<sup>th</sup> day of February, 2007



**JONATHAN R. ZUCKERMAN**  
Notary Public, State of New York  
No. 01ZU6126192  
Qualified in Westchester County  
Commission Expires May 2, 2009

INDEX NO.: 02773/07  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

---

ELEANOR TEDONE,

Plaintiff,

- against -

H.J. HEINZ COMPANY,  
OWENS-ILLINOIS, INC. d/b/a  
OWENS BROCKWAY GLASS CONTAINERS,  
and MGM MIRAGE, INC. d/b/a BORGATA  
HOTEL CASINO & SPA,

Defendants.

---

---

**SUMMONS AND VERIFIED COMPLAINT**

---

---

**JASNE & FLORIO, L.L.P.**

*Attorneys for Plaintiff*

525 North Broadway, Suite 222  
White Plains, New York 10603  
(914) 997-1212





MAY 07 2007

**CT CORPORATION**

A WoltersKluwer Company

**Service of Process  
Transmittal**

05/03/2007

Log Number 512189548

**TO:** Mona Huffman  
Owens-Illinois Inc.  
One Michael Owens Way  
Perrysburg, OH, 43551-2999

9946346

**RE:** Process Served in New York

**FOR:** Owens-Illinois, Inc. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Eleanor Tedone, Pltf. vs. H.J. Heinz Company, et al. including Owens-Illinois, Inc., etc., Dfts.

**DOCUMENT(S) SERVED:** Summons, Verified Complaint, Verification

**COURT/AGENCY:** Westchester County: Supreme Court, NY  
Case # 02773/07

**NATURE OF ACTION:** Product Liability Litigation - Manufacturing Defect - 'Glass containers used in packaging of Heinz products'

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, New York, NY

**DATE AND HOUR OF SERVICE:** By Process Server on 05/03/2007 at 11:00

**APPEARANCE OR ANSWER DUE:** Within 20 days after the service, exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** Hugh G. Jasne  
Jasne & Florio, L.L.P.  
525 N. Broadway  
Suite 222  
White Plains, NY, 10603  
(914) 997-1212

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day, 791291423613

**SIGNED:** C T Corporation System  
**PER:** Christopher Tilton  
**ADDRESS:** 111 Eighth Avenue  
New York, NY, 10011  
**TELEPHONE:** 212-884-8940

RECEIVED

MAY 10 2007

SUZANNE WICIAK

Page 1 of 1 / ND

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of the package only, not of its contents.

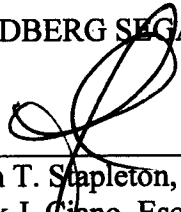
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice of Removal was served upon the following by deposit in the United States mail, first class postage prepaid, this 25<sup>th</sup> day of May, 2007:

JASNE & FLORIO  
525 N. Broadway, Suite 222  
White Plains, NY 10603  
(914) 997-1212  
*Attorneys for Plaintiff*

GOLDBERG SEGALLA, LLP

By: \_\_\_\_\_

  
Brian T. Stapleton, Esq.  
Frank J. Ciano, Esq.  
David S. Osterman, Esq.  
GOLDBERG SEGALLA, LLP  
**Attorneys for All Defendants**  
170 Hamilton Avenue, Suite 203  
White Plains, New York 10601  
(914) 798-5400